

sell to anyone who wanted the programming and to do so at the same price for all customers, but that Time Warner had imposed a contrary policy on Court TV. Thus, notwithstanding my discussions with Court TV over a long period of time, Liberty has been unable to obtain Court TV programming due to the pressures and exclusive arrangements brought to bear by Time Warner upon Court TV.

8. Liberty has been singled out for discriminatory treatment in the sale of Court TV solely because it competes directly, head to head, with Time Warner at its largest cable operation in New York City. Once again, Liberty expects this anti-competitive practice will be corrected through Section 19 regulations, and, on the other hand, will continue for so long as Section 19 is enjoined.

9. The existing antitrust laws do not provide an effective or meaningful remedy for a small company like Liberty due to the time and cost of pursuing an antitrust claim against a corporate giant like Time Warner. Liberty expects that rules promulgated under Section 19 will specifically target pernicious behavior in the cable industry in a clear-cut way that will deter Time Warner's misconduct without protracted litigation, or at least provide an opportunity for improprieties to be remedied more cheaply and quickly through the expedited adjudicatory review required by Section 19.

C. Time Warner's Unclean Hands Counsel Against Preliminary Injunctive Relief

10. Before awarding any preliminary injunction against Section 19, the Court should also consider whether Time Warner is entitled to equitable relief from this Court in light of its history of inequitable behavior. In addition to discriminating in the sale of its programming, Time Warner has also engaged in an extensive harassment campaign directed against Liberty. This harassment is designed and intended to slow down the introduction of Liberty service in New York City, and ultimately to drive Liberty out of business in New York City.

11. Examples of Liberty's complaints and complaints of others who have been penalized for changing service from Time-Warner are annexed hereto as Exhibits A-F. These exhibits set forth specific facts about the Time Warner harassment campaign in New York, including (a) threats by Manhattan Cable to shred the cables of Liberty customers and defamatory letters sent by Manhattan Cable to Liberty customers (see my letter to William Squadron dated February 7, 1992 annexed as Exhibit A); (b) the harassment of Liberty's customers, employees and prospective employees by the Time Warner cable companies, and tampering with Liberty equipment (see my letters to William Squadron dated June 16, 1992, July 10, 1992 and July 17, 1992 annexed as Exhibits B, C and D); (c) harassment through abusive billing practices of former Manhattan Cable subscribers who switch to Liberty's service (see letter from Dina Fatigato to William Squadron dated July 17, 1992 annexed as Exhibit E, and W. James MacNaughton to

William Squadron dated October 1, 1992 annexed as Exhibit F); and (d) Time Warner's exclusionary arrangements precluding the sale of Court TV programming to Liberty (see Exhibit B).

12. Liberty has complained to the New York City Department of Telecommunications and Energy (the "Department"), the City agency which regulates Time Warner cable operations in New York City, regarding this harassment campaign. The Department has advised Liberty that it is conducting an investigation of this harassment campaign and will issue a written report. The Department has also advised Liberty that the report has been delayed due to the refusal of Time Warner to cooperate with the Department's investigation. In the proceeding before this Court, the City of New York has moved to appear as amicus curiae to support the 1992 Cable Act, and to oppose Time Warner on the motions for preliminary injunction.

13. A preliminary injunction against Section 19 will have the practical effect of slowing down the rule-making and adjudicatory process authorized by Section 19, and allowing Time Warner and others to continue reaping illicit profits and unfairly diverting business opportunities from competitors such as Liberty. Having lost their "political battle" in Congress, Time Warner and other vertically integrated cable operators should not be permitted to continue to pursue their anti-competitive economic agenda. Nor should these businesses be

permitted by the Court to advance their injurious economic agenda
under the veil of the First Amendment.


PETER O. PRICE

Sworn to before me this
17th day of December, 1992.

Deborah Bias
Notary Public

DEBORAH BIAS
Notary Public, State of New York
No 4992580
Qualified in Suffolk County
Commission Expires February 24, 1994